

House Study Bill 607 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON KLEIN)

A BILL FOR

1 An Act relating to probation including the length of probation,
2 discharge from probation, payment of fines and fees, and
3 probation violations.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 907.1, Code 2022, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Adult criminal problem-solving court*"
4 means a court program under direct supervision of a judge
5 established to treat drug or alcohol addiction or mental
6 illness of adults charged with criminal offenses.

7 NEW SUBSECTION. 2A. "*Discharge credit*" means a fourteen-
8 day reduction from a defendant's term of probation for each
9 full calendar month the defendant is in compliance with the
10 terms of the defendant's probation.

11 NEW SUBSECTION. 2B. "*Educational credit*" means a ninety-
12 day reduction from a defendant's term of probation when
13 a defendant earns a high school diploma or high school
14 equivalency certificate or completes a certified vocational,
15 technical, or career education or training program.

16 NEW SUBSECTION. 6. "*Special probation program*" means a
17 program under the supervision of a district court or a judicial
18 district department of correctional services established to
19 treat drug or alcohol addiction, mental illness, or domestic
20 or sexual abuse of the parties involved in a criminal case,
21 or to improve outcomes for persons involved in the program
22 including an intermediate criminal sanctions program under
23 section 901B.1.

24 NEW SUBSECTION. 7. "*Technical violation*" means a violation
25 by the defendant of the terms and conditions of probation other
26 than a conviction of the defendant for a new crime.

27 Sec. 2. Section 907.7, subsection 2, Code 2022, is amended
28 by striking the subsection.

29 Sec. 3. Section 907.9, subsections 1 and 2, Code 2022, are
30 amended to read as follows:

31 1. At any time that the court determines that the purposes
32 of probation have been fulfilled and fees imposed under section
33 905.14 and court debt collected pursuant to [section 602.8107](#)
34 have been paid or are subject to a payment plan, the court may
35 order the discharge of a person defendant from probation.

1 2. a. At any time that a probation officer determines
2 that the purposes of probation have been fulfilled and fees
3 imposed under section 905.14 and court debt collected pursuant
4 to section 602.8107 have been paid or are subject to a payment
5 plan, the officer may order the discharge of a person defendant
6 from probation after approval of the district director and
7 notification of the sentencing court and the county attorney
8 who prosecuted the case.

9 b. Notwithstanding any earned discharge credit accrued under
10 subsection 6 or any educational credit accrued under subsection
11 7, a defendant's probation officer shall complete a probation
12 status report no later than halfway through the defendant's
13 probation term and provide a copy of the probation status
14 report to the defendant containing one of the following:

15 (1) An order that the defendant be discharged from probation
16 early under paragraph "a" after approval of the district
17 director and notification of the sentencing court and the
18 county attorney who prosecuted the case.

19 (2) A recommendation that the defendant's probation be
20 continued with reduced terms and conditions along with a
21 description of the defendant's progress on probation and the
22 conditions that must still be completed before the defendant
23 may be discharged from probation.

24 (3) A recommendation that the defendant's probation be
25 continued as previously ordered along with a description of the
26 defendant's progress on probation and the conditions that must
27 still be completed before the defendant may be discharged from
28 probation.

29 c. (1) If the defendant's probation status report
30 recommends the defendant continue probation with reduced terms
31 and conditions under paragraph "b", subparagraph (2), or that
32 the defendant's probation continue as previously ordered under
33 paragraph "b", subparagraph (3), the probation officer shall
34 include a description of why continued probation is necessary
35 and beneficial and shall also include any discharge credits and

1 educational credits the defendant has accrued.

2 (2) If the probation status report does not recommend
3 early termination of the defendant's probation, the defendant
4 may request further administrative review on the issue
5 of early termination of the defendant's probation by the
6 probation officer's supervisor. The requested review shall
7 be held no later than fourteen days from the date of the
8 defendant's request. During the review, the probation
9 officer's supervisor shall review the probation status report;
10 the defendant's progress and conduct on probation including
11 whether the defendant has attended court-ordered mandatory
12 counseling or treatment and whether the defendant is subject
13 to a payment plan and has been found to afford payments
14 but is purposely avoiding making payments; the underlying
15 offense and its relationship to the conditions of probation
16 imposed on the defendant; the defendant's criminal record;
17 and any mitigating factors to determine whether to reduce the
18 terms and conditions of the defendant's probation, continue
19 the defendant's probation, or discharge the defendant from
20 probation. Following this review, the supervisor shall issue
21 an addendum to the original probation status report and provide
22 a copy of the addendum and original probation status report
23 to the defendant, including either a new recommendation or
24 order regarding the matter of early termination as outlined
25 under paragraph "b" or noting a continuation of the original
26 recommendation. The addendum shall include the supervisor's
27 rationale for the change in recommendation or continuation of
28 the original recommendation.

29 d. Nothing in this subsection shall preclude a probation
30 officer or the court from terminating the defendant's probation
31 early at any time under subsection 1 or this subsection or
32 under any other applicable provision.

33 e. Paragraphs "b" and "c" shall not apply to proceedings
34 in adult criminal problem-solving courts and special probation
35 programs.

1 Sec. 4. Section 907.9, subsection 4, paragraphs a and b,
2 Code 2022, are amended to read as follows:

3 a. At the expiration of the period of probation, if the fees
4 ~~imposed under section 905.14~~ and court debt collected pursuant
5 ~~to section 602.8107~~ have been paid or are subject to a payment
6 plan, the court shall order the discharge of the person from
7 probation. If portions of the court debt remain unpaid, the
8 person shall establish a payment plan with the clerk of the
9 district court or the county attorney prior to the discharge.
10 The payment plan shall be based upon the defendant's ability to
11 pay. The court shall forward to the governor a recommendation
12 for or against restoration of citizenship rights to that
13 person upon discharge. If the court's recommendation to the
14 governor is not in favor of the restoration of the defendant's
15 citizenship rights, the court shall provide a written
16 explanation of its recommendation to the defendant and give
17 notice to the defendant of the defendant's right to appear at a
18 hearing. A person who has been discharged from probation shall
19 no longer be held to answer for the person's offense.

20 b. Upon discharge from probation, if judgment has been
21 deferred under ~~section 907.3~~, the court's criminal record with
22 reference to the deferred judgment, any counts dismissed by the
23 court, which were contained in the indictment, information,
24 or complaint that resulted in the deferred judgment, and
25 any other related charges that were not contained in the
26 indictment, information, or complaint but were dismissed, shall
27 be expunged. However, the court's record shall not be expunged
28 until the person has paid, or is subject to a payment plan,
29 for the restitution, civil penalties, court costs, fees, or
30 other financial obligations ordered by the court or assessed
31 by the clerk of the district court in the case that includes
32 the deferred judgment. The expunged record is a confidential
33 record exempt from public access under ~~section 22.7~~ but shall
34 be made available by the clerk of the district court, upon
35 request and without court order, to an agency or person granted

1 access to the deferred judgment docket under section 907.4,
2 subsection 2. The court's record shall not be expunged in any
3 other circumstances unless authorized by law.

4 Sec. 5. Section 907.9, Code 2022, is amended by adding the
5 following new subsections:

6 NEW SUBSECTION. 6. *a.* A defendant on probation shall
7 be eligible to earn a discharge credit from the defendant's
8 term of probation for each full calendar month in which the
9 defendant is in compliance with the terms of the defendant's
10 probation.

11 *b.* A defendant shall not earn a discharge credit for a
12 calendar month in which a violation has occurred, the defendant
13 has absconded from probation, or the defendant is incarcerated.

14 *c.* A defendant shall not earn a discharge credit for a
15 partial calendar month or the last full calendar month of
16 probation.

17 *d.* A discharge credit shall be applied to the termination
18 date of the defendant's probation within thirty days of the end
19 of the calendar month in which the discharge credit was earned.

20 NEW SUBSECTION. 7. A defendant on probation shall be
21 eligible to earn an educational credit from the defendant's
22 term of probation for each full calendar month in which the
23 defendant is in compliance with the terms of the defendant's
24 probation.

25 NEW SUBSECTION. 8. At least once a year, and in the
26 probation status report provided halfway through the
27 defendant's period of probation pursuant to subsection 2,
28 paragraph "b", the defendant's probation officer shall provide
29 the defendant with an accounting of the defendant's discharge
30 credits and educational credits that have accrued pursuant to
31 subsections 6 and 7. A defendant may earn both a discharge
32 credit and an educational credit to be applied toward the
33 completion of the defendant's probation in accordance with
34 this subsection. A defendant may seek administrative review
35 and recalculation of the defendant's discharge credits and

1 educational credits contained in the defendant's probation
2 status report. The department of corrections shall adopt
3 rules to implement the review and recalculation of discharge
4 and educational credits awarded under this section. A
5 defendant may seek judicial review of the credit calculations
6 at a hearing to modify the credit calculations or for early
7 termination of probation.

8 NEW SUBSECTION. 9. Subsections 6, 7, and 8 shall not apply
9 to proceedings in adult criminal problem-solving courts and
10 special probation programs.

11 NEW SUBSECTION. 10. The department of corrections shall
12 collect information and report annually in a public report made
13 available no later than December 1 of each year the number of
14 persons on probation who have earned educational and discharge
15 credits pursuant to this section during that year, the average
16 amount of credits earned per individual during that year, the
17 total number of supervision days reduced due to the awarding
18 of credits pursuant to this section during that year, and the
19 number of defendants terminated from probation early that year
20 pursuant to this section.

21 Sec. 6. NEW SECTION. 907.15 **Payment of fines and fees.**

22 1. The court shall direct that a defendant pay any monetary
23 obligations imposed in conjunction with a term of probation,
24 and shall create a payment plan based upon the defendant's
25 ability to pay which shall include a plan of payment for
26 restitution owed pursuant to section 910.2 and section 910.4,
27 subsection 4.

28 2. The court, upon the receipt of a petition from a
29 probation officer for termination of a defendant's probation,
30 shall not consider the defendant's lack of payment of fines and
31 fees as a disqualifying factor for early termination of the
32 defendant's probation unless the defendant has been found to
33 be able to afford payments but has purposely avoided making
34 payments.

35 3. A defendant who is compliant with the conditions of

1 probation shall not be precluded from obtaining a driver's
2 license due to lack of payment of fines and fees, unless a
3 defendant has been found to be able to afford payments but has
4 purposely avoided making payments.

5 4. A determination of a defendant's ability to pay shall
6 include the factors set forth in the court's financial
7 affidavit under sections 815.9 and 908.2A. A defendant may
8 petition the court for review of the defendant's financial
9 status pursuant to section 910.7.

10 Sec. 7. Section 908.11, Code 2022, is amended to read as
11 follows:

12 **908.11 Violation of probation.**

13 1. A probation officer or the judicial district department
14 of correctional services having probable cause to believe that
15 any ~~person~~ defendant released on probation has violated the
16 conditions of probation shall ~~proceed by arrest or summons~~
17 as in the case of a parole violation utilize a violation
18 response matrix to determine the severity of the violation,
19 any protective factors that mitigate the risk, and the
20 correlating appropriate sanction. This section shall not apply
21 to proceedings in adult criminal problem-solving courts and
22 special probation programs.

23 2. There shall be a presumption against incarceration for
24 technical violations of supervision.

25 3. A sentence of incarceration upon revocation shall not be
26 imposed unless the court finds either of the following:

27 a. The defendant has committed a new felony or misdemeanor.

28 b. The violation response matrix authorizes incarceration
29 under such circumstances.

30 4. The probation officer may proceed internally, without
31 court intervention, by arrest or by summons depending on the
32 severity of the alleged violation and the level of risk.

33 5. For any alleged violation for which the probation officer
34 seeks to increase the defendant's conditions of supervision
35 or extend the length of the defendant's supervision, the

1 defendant has the right to request a supervision hearing.
 2 For any alleged violation for which the probation officer
 3 seeks to revoke supervision or incarcerate the defendant, a
 4 hearing under this section is required and no such sanction may
 5 commence until and unless the violation is established.

6 ~~2.~~ 6. ~~The~~ If the sanctions require court intervention, the
 7 functions of the liaison officer and the board of parole shall
 8 be performed by the judge or magistrate who placed the alleged
 9 violator on probation if that judge or magistrate is available,
 10 otherwise by another judge or magistrate who would have had
 11 jurisdiction to try the original offense.

12 ~~3.~~ 7. If the probation officer proceeds by arrest, any
 13 magistrate may receive the complaint, issue an arrest warrant,
 14 or conduct the initial appearance and probable cause hearing
 15 if it is not convenient for the judge who placed the alleged
 16 violator on probation to do so. The initial appearance,
 17 probable cause hearing, and probation revocation hearing, or
 18 any of them, may at the discretion of the court be merged into
 19 a single hearing when it appears that the alleged violator will
 20 not be prejudiced by the merger.

21 ~~4.~~ 8. If the violation is established, the court may
 22 continue the probation or youthful offender status with or
 23 without an alteration of the conditions of probation or a
 24 youthful offender status in accordance with the violation
 25 response matrix. ~~If Pursuant to the violation response matrix,~~
 26 if the defendant is an adult or a youthful offender, the court
 27 may hold the defendant in contempt of court and sentence the
 28 defendant to a jail term while continuing the probation or
 29 youthful offender status, order the defendant to be placed in
 30 a violator facility established pursuant to [section 904.207](#)
 31 while continuing the probation or youthful offender status,
 32 extend the period of probation for up to one year as authorized
 33 in [section 907.7](#) while continuing the probation or youthful
 34 offender status, or revoke the probation or youthful offender
 35 status and require the defendant to serve the sentence imposed

1 or any lesser sentence, and, if imposition of sentence was
2 deferred, may impose any sentence which might originally have
3 been imposed.

4 ~~5.~~ 9. Notwithstanding any other provision of law to the
5 contrary, if the court revokes the probation of a defendant
6 who received a deferred judgment and imposes a fine, the court
7 shall reduce the amount of the fine by an amount equal to the
8 amount of the civil penalty previously assessed against the
9 defendant pursuant to [section 907.14](#). However, the court shall
10 assess any required surcharge, court cost, or fee upon the
11 total amount of the fine prior to reduction pursuant to this
12 subsection.

13 10. For purposes of this section, "violation response
14 matrix" means an assessment tool developed by a judicial
15 district department of correctional services to assess the
16 severity of a violation and to inform a violation response
17 decision.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to the length of probation, discharge from
22 probation, payment of fines and fees, and probation violations.

23 LENGTH OF PROBATION. The bill strikes the provision that
24 requires the length of probation shall not be less than one
25 year if the offense is a misdemeanor and shall not be less than
26 two years if the offense is a felony.

27 DISCHARGE OF PROBATION — PROCEDURE. The bill provides
28 that at any time the court, or a probation officer, determines
29 that the purposes of probation have been fulfilled and fees
30 imposed and court debt collected have been paid or are subject
31 to a payment plan, the court or probation officer may order
32 the discharge of a person from probation after approval of the
33 district director of correctional services and notification of
34 the sentencing court and the county attorney who prosecuted the
35 case.

1 The bill provides that notwithstanding any earned discharge
2 credit or any educational credit accrued, a defendant's
3 probation officer shall complete a probation status report
4 no later than halfway through the defendant's probation
5 term and provide a copy of the probation status report to
6 the defendant containing one of the following: an order
7 that the defendant be discharged from probation early, a
8 recommendation that the defendant's probation be continued with
9 reduced terms and conditions, or a recommendation that the
10 defendant's probation be continued as previously ordered. If
11 the defendant's probation status report recommends that the
12 defendant continue probation with reduced terms and conditions
13 or that the defendant's probation continue as previously
14 ordered, the probation officer shall include a description of
15 why continued probation is necessary and beneficial and shall
16 also include any discharge credits and educational credits the
17 defendant has accrued. If the probation status report does
18 not recommend early termination of the defendant's probation,
19 the defendant may request further administrative review. The
20 provisions shall not apply to proceedings in adult criminal
21 problem-solving courts and special probation programs.

22 DISCHARGE FROM PROBATION. The bill provides that at the
23 expiration of the period of probation, if the fees have been
24 paid or are subject to a payment plan, the court shall order
25 the discharge of the person from probation. If portions of
26 the court debt remain unpaid, the person shall establish a
27 payment plan based upon the defendant's ability to pay with
28 the clerk of the district court or the county attorney prior
29 to the discharge. The court shall forward to the governor a
30 recommendation for or against restoration of citizenship rights
31 to that person upon discharge. If the court's recommendation
32 to the governor is against the restoration of the defendant's
33 citizenship rights, the court shall provide a written
34 explanation of its recommendation to the defendant and give
35 notice to the defendant of the defendant's right to appear at

1 a hearing.

2 DISCHARGE AND EDUCATION CREDITS. The bill provides that a
3 defendant on probation shall be eligible to earn a discharge
4 credit from the defendant's term of probation for each full
5 calendar month in which the defendant is in compliance with
6 the terms of the defendant's probation, which shall be applied
7 to the termination date of the defendant's probation within 30
8 days of the end of the calendar month in which the discharge
9 credit was earned. A defendant shall not earn a discharge
10 credit for a calendar month in which a violation has occurred,
11 the defendant has absconded from probation, or the defendant is
12 incarcerated. A defendant shall not earn a discharge credit
13 for a partial calendar month or the last full calendar month of
14 probation. A defendant on probation shall be eligible to earn
15 an educational credit from the defendant's term of probation
16 for each full calendar month in which the defendant is in
17 compliance with the terms of the defendant's probation.

18 The bill provides that at least once a year, and in
19 the probation status report provided halfway through the
20 defendant's period of probation, the defendant's probation
21 officer shall provide the defendant with an accounting of the
22 defendant's discharge credits and educational credits that have
23 accrued. A defendant may earn both a discharge credit and an
24 educational credit to be applied toward the completion of the
25 defendant's probation. A defendant may seek administrative
26 review and recalculation of the defendant's discharge credits
27 and educational credits contained in the defendant's probation
28 status report. A defendant may seek judicial review of
29 the credit calculations at a hearing to modify or for early
30 termination of probation.

31 The bill provisions involving discharge and educational
32 credits shall not apply to proceedings in adult criminal
33 problem-solving courts and special probation programs.

34 The bill requires that the department of corrections
35 collect information and report annually in a public report made

1 available no later than December 1 each year the number of
2 persons on probation who have earned educational and discharge
3 credits during that year, the average amount of credits earned
4 per defendant during that year, the total number of supervision
5 days reduced due to the awarding of credits during that year,
6 and the number of defendants terminated from probation early
7 that year.

8 **PAYMENT OF FINES AND FEES.** The bill provides that the
9 court shall direct a defendant to pay any monetary obligations
10 imposed in conjunction with a term of probation, and shall
11 create a payment plan based upon the defendant's ability to pay
12 which shall include a plan of payment for restitution owed.
13 The court, upon the receipt of a petition from a probation
14 officer for termination of a defendant's probation, shall
15 not consider the defendant's lack of payment of fines and
16 fees as a disqualifying factor for early termination of the
17 defendant's probation unless the defendant has been found to
18 be able to afford payments but has purposely avoided making
19 payments. A defendant who is compliant with the conditions
20 of probation shall not be precluded from obtaining a driver's
21 license due to lack of payment of fines and fees, unless a
22 defendant has been found to be able to afford payments but
23 has purposely avoided making payments. A determination of
24 a defendant's ability to pay shall include the factors set
25 forth in the court's financial affidavit under Code sections
26 815.9 (indigency determination) and 908.2A (appointment of
27 attorney). A defendant may petition the court for review of
28 the defendant's financial status pursuant to Code section 910.7
29 (petition for restitution plan hearing).

30 **VIOLATION OF PROBATION.** The bill provides that a probation
31 officer or the judicial district department of correctional
32 services having probable cause to believe that any person
33 released on probation has violated the conditions of probation
34 shall utilize a violation response matrix to determine the
35 severity of the violation, any protective factors that mitigate

1 the risk, and the correlating appropriate sanction. This
2 provision shall not apply to proceedings in adult criminal
3 problem-solving courts and special probation programs.
4 There is a presumption against incarceration for technical
5 violations of supervision. A sentence of incarceration upon
6 revocation shall not be imposed unless the court finds that the
7 defendant has committed a new felony or misdemeanor, or the
8 violation response matrix authorizes incarceration under such
9 circumstances. The probation officer may proceed internally
10 without court intervention, by arrest or by summons depending
11 on the severity of the alleged violation and the level of risk.
12 For any alleged violation for which the probation officer
13 seeks to increase the defendant's conditions of supervision or
14 length of supervision, the defendant has the right to request
15 a supervision hearing. A hearing is required for any alleged
16 violation for which the probation officer seeks to revoke
17 supervision or incarcerate the defendant.
18 The bill provides definitions for "adult criminal problem-
19 solving court", "discharge credit", "educational credit",
20 "special probation program", "technical violation", and
21 "violation response matrix".